

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Wilmington, Mount Sterling, Zanesville and)
Baltimore, Ohio¹)

MB Docket No. 04-161

RM-10961

RM-11111

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 9, 2005

Released: November 10, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")² issued in response to a Petition for Rule Making filed on behalf of Vernon R. Baldwin, Inc. ("Petitioner") licensee of Station WKLN(FM) ("WKLN"), Channel 272A, Wilmington, Ohio. Petitioner proposed to reallocate Channel 272A from Wilmington to Mount Sterling, Ohio. Petitioner filed comments in which it reiterated its intent to effectuate its proposal. Southeastern Ohio Broadcasting System, Inc. ("Southeastern"), licensee of Station WHIZ-FM, Zanesville, Ohio, filed a counterproposal proposing to downgrade Channel 273B to Channel 273B1, reallocate Channel 273B1 from Zanesville to Baltimore, Ohio and to modify Station WHIZ-FM's license accordingly (RM-11111). Petitioner filed reply comments to Southeastern's counterproposal. After the record was closed, Petitioner and Southeastern filed a "Joint Request for Approval of Universal Settlement" ("Joint Request").

2. The Joint Request asks that Petitioner's Petition for Rule Making be dismissed with prejudice and that Southeastern's counterproposal be granted. The two parties state that they have settled this case pursuant to the Commission's recently announced settlement window.³ Consistent with the *Public Notice*, the Notice of Proposed Rule Making in this docket has been released and the comment date fell on or before June 14, 2005. The reallocation of Channel 273B1 to Baltimore (2000 U.S. Census population of 2,881 persons) would provide Baltimore with its first local aural transmission service. Southeastern made the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's rules,⁴ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ In

¹ Zanesville and Baltimore have been added to the caption.

² *Wilmington and Mount Sterling, Ohio*, 19 FCC Rcd 7153 (MB 2004).

³ *Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments*, 20 FCC Rcd 10801 (MB 2005) ("Public Notice").

⁴ 47 C.F.R. § 1.420(i).

⁵ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁶

3. We find that reallocating Channel 273B1, Station WHIZ-FM, from Zanesville to Baltimore would result in a preferential arrangement of allotments under the FM allotment priorities because it would provide the first local aural transmission service to Baltimore (priority (3) of the FM allotment priorities), whereas retaining the channel at Zanesville would provide the community with its fourth local service, triggering priority (4) of the FM allotment priorities. Further, reallocating Channel 273B1 to Baltimore would not create any white or gray service areas, would eliminate two existing short-spacings to existing stations⁷ and would provide a net gain in radio service to 347,085 persons compared to the service provided by its present operation in Zanesville. We find that Baltimore, Ohio, is a community to which an FM allotment may be made. Southeastern states that Baltimore is governed by an elected mayor and a six-member council and that Baltimore has its own police department, several businesses that include "Baltimore" within their names, a biweekly publication entitled "The Baltimore Town Crier," and several churches. We also observe that the reallocation of Channel 273B1 to Baltimore would not deprive Zanesville (2000 U.S. Census population of 25,586 persons) of its sole local aural transmission outlet because Zanesville will retain local service from two noncommercial educational FM broadcast stations and one AM broadcast station.⁸ Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,⁹ we will modify the license of Station WHIZ-FM to specify operation on Channel 273B1 at Baltimore, Ohio. In addition, pursuant to the *Public Notice*, we will waive the provisions of Section 1.420(j) of our rules to the extent that no limits are being placed on consideration received by Petitioner, and grant the Joint Parties' Request for Approval of Universal Settlement.

4. Consistent with the technical requirements of the Commission's rules, Channel 273B1 can be allotted to Baltimore, Ohio, utilizing coordinates of 39-47-51 NL and 82-36-07 WL, with a site restriction of 5.3 kilometers (3.3 miles) south of Baltimore. The reference coordinates are located within 320 kilometers (199 miles) of the U.S.-Canadian border. Since Canadian concurrence has not yet been received, if a construction permit for Channel 273B1 at Baltimore, Ohio, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: "Operation with the facilities specified herein is subject to the modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada."

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁷ Specifically, the reallocation will eliminate a short spacing of 2.6 kilometers (1.6 miles) between Station WHIZ-FM and Station WVKO-FM, Johnstown, Ohio, and will eliminate a short spacing of 62.2 kilometers (38.7 miles) between Station WHIZ-FM and Station WDVE(FM), Pittsburgh, Pennsylvania

⁸ Zanesville will retain local service from Station WOUZ-FM, Channel 211A; Station WJIC, Channel 219A and Station WHIZ-AM, 1240 kHz.

⁹ 47 C.F.R. § 1.420(i).

5. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

6. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective December 27, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Baltimore, Ohio	273B1
Zanesville, Ohio	_____

7. IT IS FURTHER ORDERED that the foregoing Joint Request for Approval of Universal Settlement Agreement IS GRANTED.

8. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Vernon R. Baldwin, Inc. IS DISMISSED with prejudice as requested.

9. IT IS FURTHER ORDERED, That the Counterproposal submitted by Southeastern Ohio Broadcasting System, Inc. IS GRANTED.

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Southeastern Ohio Broadcasting System, Inc. for Station WHIZ-FM, Zanesville, Ohio, IS MODIFIED to specify operation on Channel 273B1 at Baltimore, Ohio, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

11. Pursuant to 47 C.F.R. Section 1.1104(3)(l), Southeastern Ohio Broadcasting System, Inc. licensee of Station WHIZ-FM, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for Station WHIZ-FM at the time its Form 301 application is submitted.

12. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

13. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Assistant Chief
Audio Division
Media Bureau**